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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

APR 20 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Streamlining the Commission's Antenna)
Structure Clearance Procedure)

and)

Revision of Part 17 of the Commission's)
Rules Concerning Construction, Marking,)
and Lighting of Antenna Structures)

WT Docket No. 95-5

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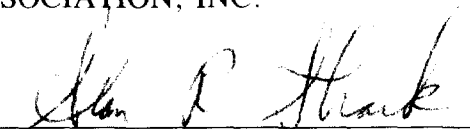
To: The Commission

**REPLY COMMENTS
OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

By:


Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez. Chartered
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

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**REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulation, respectfully submits its Reply Comments in the above-entitled proceeding.^{1/} The Commission's proposal to implement an antenna registration program elicited broad support from the telecommunications community. The rule changes proposed should be implemented promptly, with the modifications outlined below suggested by AMTA and numerous other parties.

^{1/} Notice of Proposed Rule Making, WT Docket No. 95-5, FCC 95-16 (released January 20, 1995) ("NPR" or "Notice").

I. ANTENNA STRUCTURE REGISTRATION

There was unanimous support in the Comments for the FCC's proposal to implement a program for antenna structure registration.^{2/} It is evident that the telecommunications industry believes such a program would both enhance air navigation safety and reduce the administrative burden associated with this effort for both industry and government.

Like AMTA, a number of commenters recommended that the registration program be conducted on a geographic basis.^{3/} Others suggested that registration should be coordinated with the license renewal process.^{4/}

The Association remains convinced that license renewal is not the optimal trigger for requiring antenna structure registration because of the numerous, unrelated FCC licensees that may utilize a facility that none of them may own or manage. Because individual licensees often have no legal control over tower maintenance, AMTA strongly supports the FCC's proposal to shift the responsibility for registration to the appropriate party - the structure owner/manager. This same rationale dictates against tying the timing of the registration process to the renewal of a potentially unrelated licensee's

^{2/} See, e.g., Comments of Paging Network, Inc. ("PageNet"), Capital Cities/ABC, Inc. ("Capital Cities/ABC"), Motorola, Inc., Cellular Telecommunications Industry Association ("CTIA"), GTE Service Corporation ("GTE"), Personal Communications Industry Association ("PCIA"), National Association of Broadcasters ("NAB"), Southwestern Bell Mobile Systems, Inc. ("SBMS"), American Personal Communications ("APC"), and UTC.

^{3/} See, e.g., Comments of SBMS, PageNet, NAB, and GTE.

^{4/} See, e.g., Comments of CBS, Inc., and Joint Comments of Pacific Bell, Nevada Bell and Pacific Bell Mobile Services.

authorization, in favor of a program that would be conducted on a geographic basis.

Most parties also agreed with AMTA's recommendation that the registration requirement should be limited to structures which require FAA approval.^{5/} They identified the costs and administrative burdens of registering an additional four hundred thousand or more structures as unnecessary and unlikely to produce tangible benefits. The Federal Aviation Administration ("FAA") disagreed. It stated that it would like to see the FCC register all antenna structures to facilitate the FAA's identification of ownership and marking and lighting requirements when problems are reported.^{6/}

While the Association appreciates that the FAA might prefer an all-encompassing program, that agency has presented no compelling argument to support its recommendation. It has not offered any evidence of either a statistical or even anecdotal nature that public safety considerations mandate this expansion in governmental oversight. The Association is unwilling to endorse the unsupported preference of even this expert agency in light of the associated administrative and other expenses involved. AMTA would, of course, be please to reconsider its position if the FAA were to advance a documented, public interest basis for its request.

Substantial concern was expressed in the Comments by AMTA and other parties that the registration requirement not delay system construction.^{7/} These parties noted

^{5/} See, e.g., Comments of Industrial Communications & Electronics, Inc. ("IC&E"), APC, SBMS, Pacific Bell, PCIA, Motorola, and PageNet.

^{6/} FAA Comments at p. 3.

^{7/} See, e.g., Comments of ALLTEL Mobile Communications, Inc. ("ALLTEL Mobile"), APC, and SBMS.

that only FAA approval need be required prior to station construction to ensure air navigation safety since the FCC's registration program is intended to mirror what the FAA has already approved. There were also suggestions in the Comments that the entire governmental review and registration process could be simplified further by combining the FAA and FCC forms.^{8/} The Association agrees that a consolidated form would be beneficial for both industry and government, and recommends that the FCC give serious consideration to that proposal.

Finally, while there is no unanimous position among the commenters regarding the optimal method of measurement for site coordinates and related information, several parties addressing this issue recommended the use of GPS devices.^{9/} AMTA continues to believe that GPS analyses, while less than perfect, are likely to yield the most reliable and most consistent data on a relatively cost efficient basis. The Association also supports the suggestions made by parties such as CTIA, Motorola and PageNet that the FCC provide essentially a "safe harbor" for licensees correcting their site parameters to reflect more current, presumably more accurate, information. This approach would be consistent with the FCC's recognition of the primary responsibility of the structure owner, rather than individual licensees, for ensuring the accuracy of this information at initial registration and on an ongoing basis ^{10/}

^{8/} See Comments of UTC.

^{9/} See, e.g., Comments of IC&E, FAA, and SBMS.

^{10/} The only party espousing a different approach is Kelley Communications, Inc ("Kelley"). Kelley advocates "vigorous enforcement" of the obligation to report accurate antenna structure information with no "good faith" exceptions to those standards.
(continued...)

II. NEW REQUIREMENTS FOR ANTENNA STRUCTURE OWNERS

Virtually all commenting parties vigorously supported the FCC's proposal to shift primary responsibility for antenna structure registration from individual licensees to the tower owner.^{11/} The industry endorsed the Commission's determination that placing this responsibility on the entity which has control over the structure will accelerate problem resolution in this area. Notice at ¶ 21. Indeed, a number of parties, including AMTA, recommended that licensees be relieved of this obligation which typically they have no legal ability to perform.^{12/}

If the Commission declines to relieve licensees of this responsibility entirely, then the Association recommends that it, at a minimum, adopt Motorola's recommendation that the licensees' collective forfeiture be no greater than the fine the FCC could impose

^{10/}(...continued)

Indeed, Kelley recommends that the Commission continue to require "every FCC applicant, licensee and permittee to report antenna structure information to the nearest second in latitudinal/longitudinal coordinates,...and the nearest meter in height." Kelley Comments at p. 4. Kelley also takes this opportunity to challenge the Wireless Telecommunications Bureau's ("WTB") "inconsistent, unreasonable and unsafe" decision in a Finder's Preference proceeding which currently is on appeal. Order, In the Matter of Lawrence E. Vaughn, Jr., 9 FCC Rcd. 4438 (1994), recon. pending. Kelley Comments at pp. 5-10. The Commission should note that Kelley, like Mr. Vaughn, has numerous Finders' Preference requests pending before the WTB which rely on the rigid, "pre-Vaughn" standard for determining when a discrepancy in site information should form the basis for license cancellation and the award of a Finder's Preference.

^{11/} See, e.g., Comments of IC&E, ALLTEL Mobile, GTE, Industrial Telecommunications Association ("ITA"), APC, Mitchell Energy & Development, PCIA, Mobile Telecommunication Technologies Corp ("Mtel"), CTIA, American Petroleum Institute ("API"), Motorola, Capital cities/ABC, PageNet, and UTC. As noted in Footnote 10, supra, Kelley recommends that every applicant, licensee and permittee retain this responsibility.

^{12/} See, e.g., Comments of ALLTEL Mobile, GTE, ITA, PCIA, Mtel, Capital Cities/ABC, and UTC.

on the tower owner individually. This approach will eliminate any possible economic incentive not to pursue the tower owner aggressively in favor of fining multiple, individual users of the facility.

Finally, AMTA also supports the CTIA recommendation that the FCC take this opportunity to clarify its authority to preempt local and state regulations that arbitrarily prevent or substantially inhibit the entry or provision of federally-approved telecommunications services.^{13/} While the Association appreciates the concern expressed by the FAA regarding the proliferation of towers in recent years and the advantages of additional shared use of structures,^{14/} the ever-increasing public demand for the convenience and safety available through wireless communications services has been well documented. The FCC must ensure that the public interest in the ubiquitous availability of these services on a competitive basis not be impeded unreasonably by state and local restrictions on antenna placement

III. CONCLUSION

For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding consistent with the recommendations detailed herein.

^{13/} CTIA Comments at p. 7 and FN 12. The Association also supports CTIA's cited Petition for Rule Making regarding this matter.

^{14/} FAA Comments at p. 6.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 20th day of April, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Reply Comments to the following:

- * Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554
- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554
- * Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554
- * Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554
- * Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554
- * Regina Keeney, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554
- * Ralph Haller, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

- * Gerald Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554
- * Rosalind K. Allen, Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554
- * David Furth, Deputy Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554
- * Robert McNamara, Chief
Private Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5322
Washington, DC 20554
- * John Cimko, Jr., Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street, NW, Room 644
Washington, DC 20554
- * William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, NW, Room 614
Washington, DC 20554
- Robert S. Foosaner, Esq.
Larry Krevor, Esq.
Nextel Communications, Inc.
800 Connecticut Avenue, NW, Suite 1001
Washington, DC 20006

Mary Brooner, Esq.
Motorola, Inc.
1350 Eye Street, NW, Suite 400
Washington, DC 20005

Emmett B. Kitchen
President
PCIA/NABER
1501 Duke Street, Suite 200
Alexandria, VA 22314

Mark Crosby
President and Managing Director
ITA/CICS
1110 North Glebe Road, Suite 500
Arlington, VA 22201

Michael Carper, Esq.
Vice President & General Counsel
OneComm Corporation
4643 S. Ulster Street, Suite 500
Denver, CO 80237

Jeffrey R. Hultman
President, Director and CEO
Dial Page, Inc.
301 College Street, Suite 700
Greenville, SC 29603-0767


Cheri Skewis

* Via Hand-Delivery